IN THE HIGH COURT OF BOMBAY AT GOA
***

SECOND APPEAL NO. 14 OF 2003

Shri Fateh Bahadur Singh,
major, married, businessman
r/o Flat No.16, Pai Bldg.,
Behind Uma Service Center,
Maundvel, Vasco da Gama,
Goa. ... Appellant

Versus

1. Smt. Madhukar Phadte,
major, widow of
Madhukar H. Padte, and

2. Shri Abhay Madhukar
Phadte, near Gajanan
Temple, Sansmole-Baina,
Baina, Vasco da Gma, Goa. ... Respondents.

Shri S. D. Lotlikar, Senior Advocate with Shri A. D. Bhobe, advocate for the appellant.

Shri V. A. Lawande, advocate for the respondents.

CORAM : F. I. REBELLO, J.

DATE : 13th June, 2003.

ORAL ORDER

The respondents were sued as legal representatives of the late Madhukar Padte. The case of the appellant herein was that he had advanced a loan to the respondents and towards repayment of the loan the late Madhukar had issued two cheques. These cheques when presented for payment, were dishonoured. Proceedings under Section 138 of the Negotiable Instruments Act, 1881, were taken which were disposed of as in the meantime, the said Madhukar expired.

2. In the suit filed, the defence of the legal representatives was denying the very consideration itself. The courts below on consideration of the evidence found that

the plaintiff had been unable to prove that the loan amount had been advanced and accordingly dismissed the suit.

3. At the hearing, learned counsel for the appellant contends that once a cheque was issued there was a presumption in favour of the appellant, which presumption had to be rebutted by the respondents. This presumption had not been rebutted and in these circumstances, the suit ought to have been decreed. In the instant case, the respondents who were the legal representatives of Madhukar Padte disputed the consideration for issue of the cheques itself. In other words, they contended that there was no loan at all advanced by the appellant originally and a further contention was raised that the cheques could not have been issued as on the date the cheques were dated, the deceased Madhukar was in the hospital. Once the respondents had disputed the very consideration itself it was the duty of the appellant to prove that the monies had been advanced and for that purpose to show that there was consideration for the cheque. That burden has not been discharged on the assessment of evidence by the trial Court and the Appellate Court.

In my opinion, therefore, there is no question of law which arises in second appeal. Considering that Second Appeal stands dismissed with no order as to costs.

F. I. REBELLO, J.